

Feb 9, 2007

EXHIBIT 15  
DATE 2-9-07  
HB 133 + 373

Testimony to (H) Natural Resource Committee  
from Tony Kolnik

Documents to show Committee violation of the  
Water Use Act (MCA § 85-2-302) have occurred  
for  $5 \pm$  yrs at Gallatin Valley, West Gallatin River  
Northstar + Galactic Park subdivisions ( $500 \pm$  acres).

Please Note Letter to Judge Jeffrey M. Sherlock  
from Tim D. Hall (Chief Legal Counsel D.N.R.C) dated  
NOVEMBER 6, 2006. Enforcement of violation is  
an ongoing problem at D.N.R.C. regarding the Water  
Use Act.

Sincerely yours  
Tony Kolnik

# DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

BOZEMAN WATER RESOURCES REGIONAL OFFICE



BRIAN SCHWEITZER  
GOVERNOR

STATE OF MONTANA

PHONE: (406) 386-3136  
FAX: (406) 587-9726

2273 BOOT HILL COURT, SUITE 110  
BOZEMAN, MONTANA 59715-7249

September 19, 2006

Utility Solutions  
Attn: Barb Campbell  
PO Box 10098  
Bozeman, MT 59719

Re: Water use in Northstar and Galactic Park Subdivisions

*Utility Solutions  
500 acres + subdivisions*

Dear Ms. Campbell,

The Department of Natural Resources and Conservation (department) continues to investigate the use of water from the central water supply system for the Northstar and Galactic Park Subdivisions. Your previous cooperation in ceasing the use water from the central system for irrigation purposes is appreciated and has rectified the unauthorized use identified to you by my letter of July 21, 2006. However, the department received a letter from Art Wittich dated August 29, 2006, alleging further unauthorized water use by houses in Northstar and Galactic Park Subdivisions.

I investigated the allegations on site on September 5, 2006. In addition, I confirmed with you by telephone on September 11, 2006, that two houses and commercial building were using water through the central system for the subdivisions. The department has not issued a final decision on the application for a permit #41H 30012025 or application for change in existing water right #41H 30014080 for water use within these subdivisions, so a useable water right does not exist at this time.

The department finds that the use of water currently being supplied to these residences and commercial sites is a violation of the Water Use Act (MCA §85-2-302) since you do not have a useable water right for such purposes. Final action has not been taken regarding your pending application which would cover these uses. You have until October 19, 2006 to voluntarily comply by ceasing use of water via the central water supply system for the Northstar and Galactic Park Subdivisions per MCA §85-2-114(4). The Department hereby gives you notice pursuant to Mont. Code Ann. § 85-2-115 that one of its employees will be conducting an on-site investigation in the next 30 days.

Montana law provides civil and criminal penalties for the violation of the Water Use Act. Mont. Code Ann. § 85-2-122. Violators can be fined up to \$1000 a day per violation, with each day of violation constituting a separate violation.

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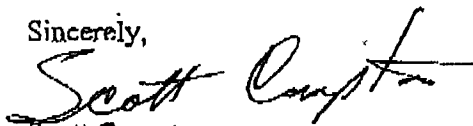
AN EQUAL OPPORTUNITY EMPLOYER

EXHIBIT B

The DNRC has the authority to request the County Attorney to take legal action against you if necessary. That can include criminal prosecution, proceedings to collect the fines imposed against you, and proceedings to obtain an injunction. Mont. Code Ann. § 85-2-114, 116, 122.

Please contact this office immediately if you have any information that can help resolve this matter prior to the investigation being conducted.

Sincerely,



Scott Compton  
Regional Manager  
Montana Dept. of Natural Resources and Conservation

Cc Tim Hall  
Anne Yates

attly for D.N.R.C

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DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION



BRIAN SCHWEITZER  
GOVERNOR

DIRECTOR'S OFFICE (406) 444-2074  
TELEFAX NUMBER (406) 444-2684

STATE OF MONTANA

WATER RESOURCES DIVISION (406) 444-6601  
TELEFAX NUMBERS (406) 444-0533 / (406) 444-5918  
<http://www.dnrc.mt.gov>

1424 9TH AVENUE  
PO BOX 201601  
HELENA, MONTANA 59620-1601

X November 8, 2006

Arthur Wittich, Esq.  
Wittich Law Firm  
602 Ferguson Ave., Suite 5  
Bozeman, Montana 59718

Re: Utility Solutions, LLC at Gallatin Valley, West Gallatin River

Dear Mr. Wittich,

The Department is in receipt of your letter dated October 25, 2006, regarding unauthorized use of water by Utility Solutions, LLC (US). We recognize that you are following this situation very closely and have obtained copies of all the relevant information from the Department. As you know, the Department has worked with US in the past to resolve complaints by your clients.

Specifically, we followed-up on your complaint in July regarding unauthorized water uses from the central water system of US for testing the system and irrigation. That complaint was resolved with the voluntary compliance by US. You made a second complaint in late August concerning alleged unauthorized water use by houses in Northstar and Galactic Park Subdivisions. We investigated your complaint within a week, and sent US a letter again requesting voluntary compliance pursuant to Mont. Code Ann. §85-2-114(4). You received a copy of that letter. After the expiration of the period for voluntary compliance, the Department again made another site investigation and a copy of the report was provided to you. During the last site investigation, the Department found that unauthorized uses of water for commercial and residential properties, however small, were still occurring.

US has since applied for an interim permit under Application for Beneficial Water Use Permit No. 30023457-41H for municipal water use in Galactic Park Subdivision. The Department reviewed the request for an interim permit and concluded that a temporary interim permit (through April) for a limited amount of consumptive use (.02 acre-feet) is appropriate. This interim permit allows for the current water use that is occurring in Galactic Park Subdivision. The water use in Northstar Subdivision (commercial properties) is not authorized and the Department has sent a letter to US regarding this use. A copy of this letter was provided to you. In the letter, the

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STATE WATER PROJECTS  
BUREAU  
(406) 444-6646

WATER MANAGEMENT  
BUREAU  
(406) 444-6637

WATER OPERATIONS  
BUREAU  
(406) 444-0860

WATER RIGHTS  
BUREAU  
(406) 444-6610

Department requests that US contact the Department to resolve the unauthorized use in Northstar.

As you are aware and my legal counsel advises, enforcement under the Montana Water Use Act is discretionary. The Department may elect not to pursue injunctive relief impacting third parties (businesses in Northstar Subdivision), especially when the amount of water use is small, adverse effect is probably not occurring, and permit applications have been filed. Seeking injunctive relief under those circumstances could result in closing businesses or in the case of residences, shutting off water to families. The Department must carefully weigh the impacts of taking such a step. \*

However, the Department can ask the County Attorney to pursue fines of up to \$1000 a day per violation against US, with each day of violation constituting a separate violation. The Department also has the authority to request the County Attorney to take other legal action against a violator if necessary. This action can include criminal prosecution. Mont. Code Ann. §§ 85-2-114, 116, 122. The Department will continue to investigate complaints and seek remediation as called for under the circumstances.

Sincerely,



Mary Sexton  
Director

c. Terri McLaughlin  
Tim D. Hall

State of Montana



RECEIVED

NOV 2 2006

D.N.R.C.

First Judicial District Court

Lewis and Clark County

Hon. Thomas C. Honzel

Hon. Dorothy McCarter

Hon. Jeffrey M. Sherlock

November 1, 2006

Arthur V. Wittich  
602 Ferguson Avenue, Suite 5  
Bozeman MT 59715

Tim D. Hall  
PO Box 201601  
Helena MT 59620-1601

John E. Bloomquist  
David R. Stewart  
PO Box 1185  
Helena MT 59624

Matthew W. Williams  
506 E. Babcock  
Bozeman MT 59715

John M. Kaufmann  
716 S. 20th Avenue, Suite 101  
Bozeman MT 59718

RE: *Faust v. DNRC*  
Cause No. BDV-2005-443

Gentlemen:

I have just received a copy of the Order on Remand issued by the Department of Natural Resources and Conservation dated October 27, 2006.

I thought it would be prudent to solicit your ideas on how we should next proceed. I do not want to encourage a new round of briefing, but would appreciate hearing from each of you as to what our next step should be.

Sincerely,

JEFFREY M. SHERLOCK  
District Court Judge

JMS/tbd

November 6, 2006

Hon. Jeffrey M. Sherlock  
First Judicial District Court  
Lewis & Clark County  
228 Broadway  
County Courthouse  
Helena, MT 59601

RE: *Faust v. DNRC*  
Cause No. BDV-2005-443

Judge Sherlock,

Thank you for your letter of November 1, 2006, inquiring as what each party thinks the next step should be in this matter.

On remand the DNRC final decisionmaker essentially determined that: 1) prestream capture of tributary groundwater occurred so the DNRC cannot process or grant the application at issue because of the Missouri River Basin Closure; and 2) while an applicant can use augmentation to mitigate adverse effects, they cannot use augmentation to augment their way out of an immediate or direct connection, i.e., in this case since there is prestream capture of tributary groundwater the application simply cannot be processed, augmentation or no augmentation.

Therefore, the main issue before the Court seems to be the correctness of the DNRC's final decision in those two matters.

The DNRC is willing to have this case decided on the present briefs and oral argument, but is also willing to have further oral argument or briefing as the Court decides in its discretion.

Sincerely,

/s/  
Tim D. Hall  
Chief Legal Counsel